

MICHAEL A. SWEET (SBN 184345)
msweet@foxrothschild.com
EDWARD J. TREDINNICK (SBN 84033)
etredinnick@foxrothschild.com
FOX ROTHSCHILD LLP
345 California Street, Suite 2200
San Francisco, California 94104
Telephone: (415) 364-5540
Facsimile: (415) 391-4436

Attorneys for Howard Krausse and Anne Potts

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION and PACIFIC
GAS AND ELECTRIC COMPANY,

Debtors.

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects Both Debtors

Case No. 19-30088-(DM)

Chapter 11

**RESPONSE TO REORGANIZED
DEBTORS' OBJECTION TO PROOF OF
CLAIM NO. 80260**

Date: June 7, 2023

Time: 10:00 a.m.

Place: Tele/Videoconference

I. INTRODUCTION

PG&E's objection to the Proof of Claim filed by Howard Krausse (the "Objection", the "POC" and "Krausse", respectively) should be overruled. First, the Objection addresses some, but not all, of the Krausse's claims. Second, where PG&E does address the POC claims head-on, PG&E omits facts asserted in the POC. Third, PG&E ignores facts asserted in the POC to wrongly contend that no evidence exists to support the POC (when the narrative contained within the POC constitutes evidence). Finally, PG&E introduces no evidence whatsoever necessary to shift the burden back to Krausse.

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1 **II. GOVERNING LAW**

2 “A proof of claim executed and filed in accordance with these rules shall constitute prima
3 facie evidence of the validity and amount of the claim.” Fed. R. Bankr. P. 3001(f). “Except for
4 evidence of proof of perfection of a security interest, Fed.R.Bankr.P. 3001(d), the rules do not
5 require that evidence be attached to the proof of claim.” *In re Garner*, 246 B.R. 617, 621 (B.A.P.
6 9th Cir. 2000) (footnote omitted). “[A] proof of claim executed by an attorney has an evidentiary
7 effect similar to that of a verified complaint.” *Id.* This should be no surprise since a proof of claim
8 requires a declaration that its content is true and correct. Furthermore, the Information Request
9 Form used by PG&E in this case also provides that it is made under penalty of perjury. [Doc#
10 13609-2 at 3.] Local Rule 3007-1(b) provides, with respect to claim objections, that where there is a
11 factual dispute, the Objection hearing will be treated as a status conference.

12 **III. ARGUMENT**

13 PG&E objects to the POC on the basis that “it seeks amounts for which the Debtors are not
14 liable.” [Doc# 13610 at 2.] PG&E introduces no evidence in support of its objection other than the
15 POC and the Krausse response to its Request for Information (“RFI”). Krausse will address PG&E’s
16 objections in the order presented in its memorandum:

17 **1. Fluctuating Voltage and Power Interruptions**

18 PG&E baldly contends “Krausse has not provided any evidence of the alleged fluctuating
19 voltage or power interruptions.” [Doc# 13608 at 6.] Of course, that’s not true. The POC provides
20 the following:

- 21 • “On July 11, 2017, Krausse spoke with PG&E’s agent in Eureka, Mr. Bear, about
22 multiple power interruptions, suspected electricity theft, unacceptable voltage and
23 frequency variations in power ostensibly supplied by PG&E and certainly billed for
24 by PG&E.”
- 25 • “Although Bear acknowledged that PG&E had recorded 22 outages in Willow Creek
26 year to date, PG&E phone records will demonstrate that Krausse had placed several
27 phone calls to PG&E regarding outages at the Krausse residence that were not
28 included in the official record.”

- “However, by October 7, 2017 there was a frequency deviation as measured by a frequency derived AC clock, of 30 seconds.”
- “It also suggested that the frequent power interruptions at the Willow Creek address might be due to the transfer from one power source to another illegal source.”

[Doc# 13609-1 at 6.] Thus, the POC supplied evidence of fluctuating voltage and power interruptions.

The RFI also addresses these facts. It asserts:

- “We then decided that since outages and surges were such frequent occurrences and since we were not present much of the time, it would be prudent to purchase a unit with a “soft start” which would mitigate the power surges.”
- “[Damage to the washer] occurred at a time when we had been observing large voltage variations from the standard 120 volts.”

[Doc# 13609-2 at 4.] Thus, the POC and the RFI supplied evidence of fluctuating voltage and power interruptions.

Through this argument, PG&E invites the Court to ignore the words of the POC and RFI (both submitted under penalty of perjury) in favor of its conclusory characterization those materials. The Court should decline PG&E’s invitation.

2. Personal Property Damage

PG&E, again, baldly asserts that “[Krausse] offers no evidence of causation or damages []” for his personal property damage claims concerning his deck and security camera. [Doc# 13608 at 6.] Again, PG&E’s assertions simply do not square with the material evaluated.

The POC explains that on the day the personal property damage was discovered, Krausse received a voicemail from a PG&E troubleman regarding access to Krausse’s residence. [Doc# 13609-1 at 7.] Admittedly surveillance footage does not show the troubleman present. However, as Krausse explained, the surveillance camera was damaged at the relevant time. [Doc# 13609-2 at 32.]

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Moreover, PG&E knows the identity of the troubleman that appears to have damaged the Krausse personal property. [Doc# 13609-2 at 9.] But it offers no declaration from him refuting the claim or other business record indicating that this troubleman was not present at property.¹

3. Trespass and Burglary

PG&E contends the trespass claim fails because it had the right to access the Krausse property at any time for any electricity related purpose under Electric Rule No. 16, A.12. [Doc# 13608 at 6.] First, the plain reading of that Rule appears to allow PG&E access to real property, but not a personal residence. It provides in full:

ACCESS TO APPLICANT'S PREMISES. PG&E shall at all times have the right to enter and leave Applicant's Premises for any purpose connected with the furnishing of electric service (meter reading, inspection, testing, routine repairs, replacement, maintenance, vegetation management, emergency work, etc.) and the exercise of any and all rights secured to it by law, or under PG&E's tariff schedules. These rights include, but are not limited to,

- a. The use of a PG&E-approved locking device, if Applicant desires to prevent unauthorized access to PG&E's facilities;
- b. Safe and ready access for PG&E personnel free from unrestrained animals;
- c. Unobstructed ready access for PG&E's vehicles and equipment to install, remove, repair, or maintain its facilities; and
- d. Removal of any and all of its property installed on Applicant's Premises after the termination of service.

Available at https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_RULES_16.pdf (last accessed May 17, 2023). Moreover, Krausse's narrower reading of the Rule is consistent with PG&E's statements about how it responds to voltage complaints. Namely that, "[i]f the area is not accessible, we leave a card with contact information requesting the customer to reschedule the visit." [Doc# 13609-2 at 28.] PG&E didn't do that. Instead the troubleman, specifically told Krausse via voicemail "I was into your *residence* at 640 Forest View Drive . . . you have a lock on both the meter uh boxes-panels where I need to get into." [Doc# 13609-1 at 16, emphasis added.]

Second, PG&E omits that it explicitly requested access to install an RMV meter and Krausse refused. And that following Krausse's refusal, ***PG&E agreed not to install the device on the Krausse property*** and instead agreed to install it on the PG&E box. [Doc# 13609-1 at 6.] Perhaps PG&E had the right to enter the Krausse property for any electricity related purpose at one point, but

¹ If PG&E submitted such a declaration it would only create a disputed fact, but would not shift the burden back to Krausse in light of the existing – detailed – factual allegations in the POC.

1 after it committed specifically to not enter to install an RMV meter – and then later while Krausse
2 was not present – returned to do just that, creates a factual and legal question regarding whether or
3 not PG&E committed a trespass.

4 With respect to the burglary claim, PG&E entered the Krausse property and committed
5 vandalism (Cal. Pen. Code § 549) – damage to Krausse property – a felony under certain
6 circumstances. [Doc# 13609-1 at 7 (damaged boards/floor), 18 (damaged electronics); Doc# 13609-
7 2 at 9 (damaged boards/floor), 20-25 (selected photographs), 26 (damaged electronics).] The fact
8 that PG&E vandalized Krausse's property is – at this stage and in the absence of any contradictory
9 evidence from PG&E whatsoever – more than sufficient evidence of entry with the intent to commit
10 a felony.

11 **4. Payment for Power Monitoring**

12 As with its prior arguments, PG&E offers a bald factual dispute about Krausse's power
13 monitoring without submitting contradictory evidence. Further, PG&E's discussion of the law
14 leaves something to be desired.

15 The Civil Code expressly authorizes oral contracts, except those specifically required by
16 statute to be in writing. Cal. Civ. Code § 1622. An oral contract is one in which the parties'
17 undertakings are expressed in words, but the words have not been reduced to writing. *Id.*

18 Civil Code §1621 defines an implied contract as one "the existence and terms of which are
19 manifested by conduct[.]" An implied contract is one that arises from the parties' mutual agreement
20 and intent when the parties' mutual promises have not been expressed in words. *Retired Employees*
21 *Ass'n of Orange County, Inc. v County of Orange*, 52 Cal.4th 1171, 1178 (2011); *California*
22 *Emergency Physicians Med. Group v PacifiCare of Cal.*, 111 Cal.App.4th 1127 (2003), disapproved
23 on other grounds in *Centinela Freeman Emergency Med. Assocs. v Health Net of Cal., Inc.*, 1
24 Cal.5th 994 (2017).

25 In *Scott v PG&E*, the California Supreme Court opined that:

26 "The recognition of implied-in-fact contract provisions is part of the modern trend in
27 contract law to reverse 'the common law presumption that the parties' writing and the
28 official law of contract are the definitive elements of the agreement. Evidence
derived from experience and practice can now trigger the incorporation of additional,
implied terms."

1 11 Cal.4th 454, 463 (1995), citing *Foley v Interactive Data Corp.* 47 Cal.3d 654, 679 (1988).

2 In its objection, PG&E contends no contract was formed. But it offers no evidence to
3 support that claim, notwithstanding knowing the identity of the PG&E representative that contracted
4 with Krausse on behalf of PG&E. [See, e.g., Doc# 13609-1 at 6.] PG&E – in its brief – denies that
5 it agreed to pay Krausse to monitor voltage. But that denial is not admissible evidence let alone
6 evidence at all.

7 Rather, the *evidence* before the Court is that PG&E and Krausse agreed that he would
8 monitor the voltage. The whole reason for that agreement was numerous PG&E failings running the
9 gamut from multiple power interruptions, suspected electricity theft, and voltage and frequency
10 variations. Certainly, Krausse did not agree to do PG&E’s job for it for free. The only evidence
11 before the Court is that the parties created an oral and implied in fact contact relating to PG&E’s
12 failings and monitoring by Krausse of the same. The reasonable hourly rate charged for Krausse’
13 efforts is a fact subject to dispute. PG&E’s assertion that “here there was no mutual consent, no
14 meeting of the minds, and no contract[.]” [Doc# 13608 at 7] cannot be squared with the agreement
15 described in the POC [see Doc# 13609-1 at 6].

16 **5. Aspects of the Krausse Claim PG&E did not Address**

17 PG&E offered no argument or evidence with respect to:

- 18 a. The damage to appliances. [See Doc# 13609-2 at 4-5, 7.]
19 b. PG&E’s failure to address the electricity theft it was put on notice of. [See Doc#
20 13609-2 at 8 (describing PG&E being informed of a neighbor’s efforts in their garage
21 to address an electrical bolt in the Krausse kitchen).
22 c. Erroneous charges by PG&E to Krausse for stolen electricity. [See Doc# 13609-2 at
23 29.]

24 PG&E’s objection – an objection that does not even address all of the items asserted by
25 Krausse – should not be sustained.

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IV. CONCLUSION AND REQUEST FOR RELIEF

Krausse’s POC and RFI provide ample factual support for the claim. PG&E’s argument without evidence should be rejected. Accordingly, Krausse respectfully requests the Court:

- 1. Overrule the objection;
- 2. Treat the hearing as a Status Conference and schedule an evidentiary hearing on the contested matter following a reasonable period of time for discovery; and
- 3. Provide such other and further relief as the Court deems appropriate.

Date: May 23, 2023

FOX ROTHSCHILD LLP

/s/ Jack C. Praetzellis
Jack C. Praetzellis
Attorneys for Howard Krausse and Anne Potts

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 900, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled: RESPONSE TO REORGANIZED DEBTORS' OBJECTION TO PROOF OF CLAIM NO. 80260 will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On May 23, 2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Elliot Adler eadler@theadlerfirm.com, bzimmer@theadlerfirm.com
- Aaron L. Agenbroad alagenbroad@jonesday.com, saltamirano@jonesday.com
- Gabrielle L. Albert galbert@kbbllp.com
- Annadel A. Almendras annadel.almendras@doj.ca.gov
- Destiny N. Almogue Destiny.Almogue@skadden.com, wendy.lamanna@skadden.com
- Monique D. Almy malmy@crowell.com
- Anne Andrews aa@andrewsthornton.com, aandrews@andrewsthornton.com
- Philip Anker philip.anker@wilmerhale.com, whdocketing@wilmerhale.com
- Richard L. Antognini rlalawyer@yahoo.com, hallonaegis@gmail.com
- Tyson Arbuthnot tarbuthnot@rjo.com, jyeung@rjo.com
- Lauren T. Attard lattard@bakerlaw.com, agrosso@bakerlaw.com
- Herb Baer hbaer@primeclerk.com, ecf@primeclerk.com
- Kathryn E. Barrett keb@svlg.com, amt@svlg.com
- Chris Bator cbator@bakerlaw.com, jmguigan@bakerlaw.com
- Ronald S. Beacher rbeacher@pryorcashman.com
- Hagop T. Bedoyan hagop.bedoyan@mccormickbarstow.com, ecf@kleinlaw.com
- Andrew David Behlmann abehlmann@lowenstein.com, elawler@lowenstein.com
- Tanya Behnam tbehnam@polsinelli.com, ladocketing@polsinelli.com
- James C. Behrens jbehrens@milbank.com, mkoch@milbank.com
- Jacob Taylor Beiswenger jbeiswenger@omm.com, llattin@omm.com
- Peter J. Benvenuti pbenvenuti@kbbllp.com
- Robert Berens rberens@smtldlaw.com, sr@smtldlaw.com
- Ronald F. Berestka rberestka@stonelawoffice.com, csepulveda@stonelawoffice.com
- Christian Paul Binder chris@binderhalter.com, cbinder@binderhalter.com
- Heinz Binder heinz@binderhalter.com
- Jared D. Bissell jared.bissell@troutman.com
- Jason Blumberg jason.blumberg@usdoj.gov, ustpreion17.sf.ecf@usdoj.gov
- Richard Bodnar rbodnar@rksllp.com
- Melissa Boey melissa.boey@morganlewis.com
- Paige Boldt pboldt@wattsguerra.com, cwilson@wattsguerra.com
- Jason Borg jborg@jasonborglaw.com
- Evan C. Borges eborges@ggtriallaw.com, cwinsten@ggtriallaw.com
- Mark Bostick mbostick@fennemorelaw.com, ecfbankruptcy@fennemorelaw.com
- James L. Bothwell jbothwell@hugueninkahn.com, jguzman@hugueninkahn.com
- Peter R. Boutin peter.boutin@kyl.com, lara.joel@kyl.com
- Erin N. Brady erin.brady@hoganlovells.com
- Lee Brand lee.brand@pillsburylaw.com, docket@pillsburylaw.com

- Gregory A. Bray gbray@milbank.com
- Michael D. Breslauer mbreslauer@ecf.courtdrive.com, wyones@swsslaw.com
- W. Steven Bryant , molly.batiste-debose@lockelord.com
- Chane Buck cbuck@jonesday.com
- Kathlene Burke kathlene.burke@skadden.com, burke.kathlene@gmail.com
- Craig A Burnett cburnett@nomoredebt.com, bkecf@nomoredebt.com
- Frank Busch busch@wvbrlaw.com, pallister@wvbrlaw.com
- Elizabeth J. Cabraser ecabraser@lchb.com, awolf@lchb.com
- Anthony P. Cali anthony.cali@stinson.com, lindsay.petrowski@stinson.com
- Peter C. Califano pcalifano@nvlawllp.com
- Steven M. Campora scampora@dbbwc.com, nlechuga@dbbwc.com
- Leah E. Capritta Leah.Capritta@hklaw.com, reena.kaur@hklaw.com
- Nicholas A. Carlin nac@phillaw.com, rac@phillaw.com
- Frank Thomas More Catalina fcatalina@rksllp.com
- Katherine Rose Catanese kcatanese@foley.com
- Matthew Cave mcave@kfc.law
- Barry A. Chatz barry.chatz@saul.com, barry.chatz@gmail.com
- Karen J. Chedister kchedister@h-jlaw.com
- Christina Lin Chen christina.chen@morganlewis.com, christina.lin.chen@gmail.com
- Richard A. Chesley richard.chesley@dlapiper.com, bill.countryman@dlapiper.com
- Kevin Chiu kevin.chiu@bakerbotts.com, rory.fontenla@bakerbotts.com
- Jacquelyn H. Choi jacquelyn.choi@rimonlaw.com, docketing@rimonlaw.com
- Shawn M. Christianson schristianson@buchalter.com
- Robert N.H. Christmas rchristmas@nixonpeabody.com, nyc.managing.clerk@nixonpeabody.com
- Jae Angela Chun ajc@chun.law
- Gerard T. Cicero GCicero@brownrudnick.com, NKhalatova@brownrudnick.com
- Louis J. Cisz lcisz@nixonpeabody.com
- Valerie E. Clemen , mcarter@coombslaw.com
- Alicia Clough aclough@loeb.com
- Tiffany Strelow Cobb tscobb@vorys.com
- John B. Coffman john@johncoffman.net
- Kevin G. Collins kevin.collins@btlaw.com
- Brian S. Conlon bsc@phillaw.com, rac@phillaw.com
- Charles Cording ccording@willkie.com, mao@willkie.com
- Manuel Corrales mannycorrales@yahoo.com, hcskanchy@hotmail.com
- Anne Costin anne@costinlawfirm.com
- Christopher J. Cox chris.cox@hoganlovells.com
- Donald H. Cram dhc@severson.com
- Ashley Vinson Crawford avcrawford@akingump.com, dkrasa-berstell@akingump.com
- Douglas S. Crosno douglas.crosno@hoganlovells.com
- Andrea Crowl acrowl@dbbwc.com
- J. Russell Cunningham rcunningham@dnlc.net, emehr@dnlc.net
- Keith J. Cunningham , rkelley@pierceatwood.com
- James D. Curran jcurran@wolkincurran.com, dstorms@wolkincurran.com
- Tambra Curtis tambra.curtis@sonoma-county.org, Megan.Sweeley@sonoma-county.org
- Stacy A. Dasaro sdasaro@goodwinlaw.com
- James M. Davis jdavis@cglaw.com
- Nicolas De Lancie ndelancie@jmbm.com
- Judith A. Descalso , jad_9193@ecf.courtdrive.com
- Andrew G. Devore andrew.devore@ropesgray.com, nova.alindogan@ropesgray.com
- Erin Elizabeth Dexter edexter@milbank.com
- Shounak Sanjeev Dharap ssd@arnslaw.com, mec@arnslaw.com
- Kathryn S. Diemer kdiemer@diemerwei.com
- Kathryn S. Diemer kdiemer@diemerwhitman.com

- John P. Dillman houston_bankruptcy@lgbs.com
- Caroline R. Djang cdjang@buchalter.com, Laurie.Verstegen@bbklaw.com
- Krystal Dong ykdong@gmail.com
- Jonathan R. Doolittle jonathan.doolittle@pillsburylaw.com
- Jennifer V. Doran jdoran@hinckleyallen.com
- Dustin M. Dow ddow@bakerlaw.com, jmcguigan@bakerlaw.com
- Jamie P. Dreher jdreher@downeybrand.com
- Todd Dressel tdressel@mcguirewoods.com, jtabisaura@mcguirewoods.com
- Geoffrey B. Dryvynsyde gbd@cpuc.ca.gov, geoffrey.dryvynsyde@cpuc.ca.gov
- Jeffrey Aaron Dubbin jdubbin@labaton.com, echan-lee@labaton.com
- Matthew Ducharme matthew.ducharme@hoganlovells.com, tracy.southwell@hoganlovells.com
- Cecily Ann Dumas cdumas@bakerlaw.com, hhammonturano@bakerlaw.com
- Dennis F. Dunne cprice@milbank.com, jbrewster@milbank.com
- Dennis F. Dunne ddunne@milbank.com, jbrewster@milbank.com
- Huonganh Annie Duong annie.duong@mccormickbarstow.com, dawn.houston@mccormickbarstow.com
- Luke N. Eaton eatonl@pepperlaw.com, monugiac@pepperlaw.com
- Daniel G. Egan daniel.egan@ropesgray.com, nova.alindogan@ropesgray.com
- Joseph A. Eisenberg JAE1900@yahoo.com
- Michele Ellison mellison@gibbsgiden.com, lrochelle@gibbsgiden.com
- David Emerzian , Melany.Hertel@mccormickbarstow.com
- G. Larry Engel larry@engeladvice.com
- Krista M. Enns KEnns@beneschlaw.com
- Scott Esbin sesbin@esbinalter.com
- Joseph M. Esmont jesmont@bakerlaw.com
- Michael P. Esser michael.esser@kirkland.com, michael-esser-3293@ecf.pacerpro.com
- Richard W. Esterkin richard.esterkin@morganlewis.com, melissa.boey@morganlewis.com
- Michael S. Etkin metkin@lowenstein.com
- Jacob M. Faircloth jacob@bfolegal.com
- Brett D. Fallon bfallon@morrisjames.com, wweller@morrisjames.com
- Michael C. Fallon , manders@fallonlaw.net
- Joana Fang jf@kbklawyers.com, icd@kbklawyers.com
- Joseph Kyle Feist jfeistesq@gmail.com, info@norcallawgroup.net
- David M. Feldman DFeldman@gibsondunn.com
- Matthew A. Feldman mfeldman@willkie.com
- Jennifer Feldsher jennifer.feldsher@morganlewis.com
- Mark E. Felger mfelger@cozen.com
- James J. Ficenec James.Ficenec@ndlf.com
- Kimberly S. Fineman kfineman@fhlawllp.com
- Stephen D. Finestone sfinstein@fhlawllp.com
- Timothy M. Flaherty tflaherty@mpplaw.com
- Daniel I. Forman dforman@willkie.com
- Matthew Hampton Foushee hampton.foushee@hoganlovells.com, hfoushee@gmail.com
- James P. Frantz rosa@frantzlzlawgroup.com
- Carolyn Frederick cfrederick@prklaw.com
- Matthew Patrick French mfrench@baumhedlundlaw.com
- Peter Friedman pfriedman@omm.com
- Roger F. Friedman rfriedman@rutan.com, csolorzano@rutan.com
- Xiyi Fu jackie.fu@lockelord.com, taylor.warren@lockelord.com
- Lars H. Fuller lfuller@bakerlaw.com
- Thomas M. Gaa tgaa@bbslaw.com
- Larry W. Gabriel , nfields@bg.law
- Gregg M. Galardi gregg.galardi@ropesgray.com, nova.alindogan@ropesgray.com
- Craig Solomon Ganz ganzc@ballardspahr.com, hartt@ballardspahr.com
- Jeffrey K. Garfinkle jgarfinkle@buchalter.com, lverstegen@buchalter.com

- Oscar Garza ogarza@thegarzafirm.com
- Lisa S. Gast lsg@dwgp.com, lmk@dwgp.com
- Paul R. Gaus pgaus@downeybrand.com
- Duane M. Geck dmg@severson.com
- Casey Gee casey@tlopc.com
- Evelina Gentry evelina.gentry@akerman.com
- Janet D. Gertz jgertz@btlaw.com
- Christopher Gessner cgressner@akingump.com, NYMCO@akingump.com
- R. Dale Ginter dginter@downeybrand.com
- Jon T. Givens givensjt@gmail.com, cwilson@wattsguerra.com
- Barry S. Glaser bglaser@salvatooufadel.com
- Paul R. Glassman pglassman@sycr.com
- Gabriel I. Glazer gglazer@pszlaw.com
- Gabrielle Glemann gabrielle.glemann@stoel.com, rene.alvin@stoel.com
- Jaime Godin Jtouchstone@fddcm.com
- Matthew A. Gold courts@argopartners.net
- Eric D. Goldberg eric.goldberg@dlapiper.com, eric-goldberg-1103@ecf.pacerpro.com
- Craig Goldblatt Craig.Goldblatt@wilmerhale.com, whdocketing@wilmerhale.com
- Amy L. Goldman goldman@lbbslaw.com
- Eric S. Goldstein egoldstein@goodwin.com
- Rhonda Stewart Goldstein Rhonda.Goldstein@ucop.edu, Lissa.Ly@ucop.edu
- Richard H. Golubow rgolubow@wcghlaw.com, jmartinez@WCGHLaw.com
- Michael J. Gomez mgomez@frandzel.com, dmoore@frandzel.com
- Eric R. Goodman egoodman@bakerlaw.com
- Michael R. Goodstein mgoodstein@baileycav.com
- Mark A. Gorton mgorton@boutinjones.com, cdomingo@boutinjones.com
- Mark A. Gorton mgorton@boutininc.com, cdomingo@boutinjones.com
- Michael I. Gottfried mgottfried@elkinskalt.com, AAburto@elkinskalt.com
- Louis Gottlieb Lgottlieb@labaton.com, mpenrhyn@labaton.com
- Elizabeth Graham egraham@gelaw.com
- Eric A. Grasberger eric.grasberger@stoel.com, docketclerk@stoel.com
- Debra I. Grassgreen , hphan@pszlaw.com
- Debra I. Grassgreen dgrassgreen@pszlaw.com, hphan@pszlaw.com
- Eric A. Gravink eric@rhrc.net
- Elizabeth A. Green egreen@bakerlaw.com, orlbankruptcy@bakerlaw.com
- Tracy Green tgreen@fennemorelaw.com, ecfbankruptcy@fennemorelaw.com
- Alan Greenberg agreenberg@ggtriallaw.com
- Mitchell B. Greenberg mgreenberg@abbeylaw.com, mmeroney@abbeylaw.com
- Brian Gregory b.gregory@veenfirm.com, EL.Team@Veenfirm.com
- Susan Sieger Grimm SSieger-Grimm@brownrudnick.com, NKhalatova@brownrudnick.com
- Matthew W. Grimshaw matt@grimshawlawgroup.com, ecfmarshackhays@gmail.com
- Stuart G. Gross sgross@grosskleinlaw.com, iatkinsonyoung@grosskleinlaw.com
- Carl L. Grumer cgrumer@manatt.com, mchung@manatt.com
- Ralph P. Guenther doughertyandguentherapc@jubileebk.net, Notices@montereylaw.com
- David Matthew Guess dguess@buchalter.com
- Elizabeth M. Guffy eguffy@lockelord.com, autodocket@lockelord.com
- Lloyd C. Guintivano anitag@co.lake.ca.us, lloydg@co.lake.ca.us
- Cameron M. Gulden cameron.m.gulden@usdoj.gov
- Natali Gulli ngulli@hastingslawoffice.com, ksousa@hastingslawoffice.com
- Mirco J. Haag mhaag@buchalter.com, dcyrankowski@buchalter.com
- Laurie Hager lhager@sussmanshank.com
- J. Noah Hagey hagey@braunhagey.com, tong@braunhagey.com
- Oren Buchanan Haker oren.haker@stoel.com, rene.alvin@stoel.com
- Michael Hampson mhampson@rksllp.com

- Kristopher M. Hansen dmohamed@stroock.com, mmagzamen@stroock.com
- Jay Harker jharker@clausen.com, mgenova@clausen.com
- Joseph George Harraka jgharraka@becker.legal
- Adam C. Harris adam.harris@srz.com
- Robert G. Harris rob@bindermalter.com, RobertW@BinderMalter.com
- Christopher H. Hart chart@nutihart.com, nwhite@nutihart.com
- Bryan L. Hawkins bryan.hawkins@stoel.com, Sharon.witkin@stoel.com
- Christopher V. Hawkins hawkins@sullivanhill.com, Hawkins@ecf.inforuptcy.com
- Jennifer C. Hayes jhayes@fhlawllp.com
- Geoffrey A. Heaton gheaton@duanemorris.com, dmicros@duanemorris.com
- Michael C. Hefter michael.hefter@hoganlovells.com, tracy.southwell@hoganlovells.com
- Alaina R. Heine alaina.heine@dechert.com, brett.stone@dechert.com
- Matthew Henderson matthew.henderson@msrlegal.com, karen.wigylus@msrlegal.com
- Samy Saad Henein samyhenein@aol.com, mh@suppalaw.com
- Stephen E. Hessler, P.C. , jozette.chong@kirkland.com
- Matthew Heyn matthew.heyne@doj.ca.gov
- Sean T. Higgins aandrews@andrewsthornton.com, shiggins@andrewsthornton.com
- James P. Hill hill@sullivanhill.com, bkstaff@sullivanhill.com
- Morgan R. Hirst mhirst@jonesday.com, mmelvin@jonesday.com
- Michael R. Hogue hoguem@gtlaw.com, navarrom@gtlaw.com
- David Holtzman david.holtzman@hklaw.com
- Alexandra S. Horwitz allie.horwitz@dinsmore.com
- Marsha Houston mhouston@reedsmith.com, hvalencia@reedsmith.com
- Linda Wendell Hsu lhsu@selmanlaw.com, psmith@selmanlaw.com
- Shane Huang shane.huang@usdoj.gov
- Brian D. Huben hubenb@ballardspahr.com, carolod@ballardspahr.com
- Kelly L. Huey khuey@burkeandkesslerlaw.com
- Christopher Hughes chughes@nossaman.com
- Jonathan Hughes , jane.rustice@aporter.com
- Edward R. Huguenin ehuguenin@hugueninkahn.com, jguzman@hugueninkahn.com
- Michael A. Isaacs misaacs@rinconlawllp.com, aworthing@rinconlawllp.com
- Mark V. Isola misola@brotherssmithlaw.com
- J. Eric Ivester Eric.Ivester@skadden.com, Andrea.Bates@skadden.com
- J. Eric Ivester , Andrea.Bates@skadden.com
- Lawrence A. Jacobson laj@cohenandjacobson.com, mcycle48@gmail.com
- Paul M. Jamond jamond@pacbell.net
- Kizzy L. Jarashow KJarashow@goodwinlaw.com, AFraticelliLouallen@goodwinlaw.com
- Ivan C. Jen iven@icjenlaw.com
- Amanda Jereige AJereige@winston.com, amanda-jereige-5954@ecf.pacerpro.com
- James O. Johnston jjohnston@jonesday.com
- Chris Johnstone chris.johnstone@wilmerhale.com, whdocketing@wilmerhale.com
- Andrew Jones andrew@ajoneslaw.com
- Gregory K. Jones GJones@dykema.com, cacossano@dykema.com
- John L. Jones JJones@chwlaw.us, JJJones2@outlook.com
- Robert A. Julian rjulian@bakerlaw.com, hhammonturano@bakerlaw.com
- George H. Kalikman , sdavenport@schnader.com
- Roberto J. Kampfner rkampfner@whitecase.com, mco@whitecase.com
- Bonnie E. Kane bonnie@thekanelawfirm.com, skane@thekanelawfirm.com
- Eve H. Karasik ehk@lnbyb.com
- Michael G. Kasolas trustee@kasolas.net, ecf.alert+Kasolas@titlexi.com
- Elyssa S. Kates ekates@bakerlaw.com
- Ori Katz okatz@sheppardmullin.com, LSegura@sheppardmullin.com
- William M. Kaufman wkaufman@smwb.com, eschneider@smwb.com
- Jane G. Kearl jkearl@watttieder.com, jbenton@watttieder.com

- Tobias S. Keller tkeller@kbbllp.com
- Lynette C. Kelly ustpregion17.oe.ecf@usdoj.gov
- Sarah Elisabeth Kelly-Kilgore skellykilgore@ggtriallaw.com, dvultaggio@ggtriallaw.com
- Matthew K. Kelsey mkelsey@gibsondunn.com
- Gerald P. Kennedy gerald.kennedy@procopio.com, kristina.terlaga@procopio.com
- Erica L. Kerman ekerman@willkie.com
- Samuel M. Kidder skidder@ktbslaw.com
- Marc Kieselstein , carrie.oppenheim@kirkland.com
- Jane Kim jkim@kbbllp.com
- Mary H. Kim Mary.Kim@dechert.com, brett.stone@dechert.com
- Susan E. Kirkgaard , carlyn.jorgensen@bullivant.com
- Kody D. L. Kleber kkleber@bakerlaw.com, dmartinez@bakerlaw.com
- Matthew Ryan Klinger mklinger@sheppardmullin.com, DGatmen@sheppardmullin.com
- Johnny Knadler jdknadler@yahoo.com
- Bradley C. Knapp bknapp@lockelord.com, Yamille.Harrison@lockelord.com
- Kelly V. Knight kelly.knight@srz.com
- Lydia Vanessa Ko Lvko@stonelawoffice.com
- Thomas F. Koegel tkoegel@crowell.com
- Katherine Kohn kkohn@groom.com, ashahinllari@groom.com
- Andy S. Kong kong.andy@arentfox.com
- Anna Kordas akordas@jonesday.com, mmelvin@jonesday.com
- Alan W. Kornberg , akornberg@paulweiss.com
- Bernard Kornberg bernard.kornberg@practus.com
- David I. Kornbluh dkombluh@venturahersey.com, jpatterson@venturahersey.com
- Lauren Kramer lkramer@rjo.com
- Marc Kramer mkramer@rkssl.com
- Jeffrey C. Krause jkrause@gibsondunn.com
- Lindsey E. Kress lkress@lockelord.com, autodocket@lockelord.com
- Hannah C. Kreuser hkreuser@porterlaw.com, ooberg@porterlaw.com
- Kevin Kroll kkroll@kfc.law
- Michael Thomas Krueger michael.krueger@ndlf.com, Havilyn.lee@ndlf.com
- Marek P. Krzyzowski MKrzyzowski@brownrudnick.com, SCalderon@brownrudnick.com
- Robert T. Kugler robert.kugler@stinson.com, Jess.Rehbein@stinson.com
- Duane Kumagai dkumagai@maynardcooper.com, Mshabpareh@maynardcooper.com
- Brendan M. Kunkle bkunkle@abbeylaw.com, lmeyer@abbeylaw.com
- Alisa C. Lacey alisa.lacey@stinson.com, karen.graves@stinson.com
- Timothy S. Laffredi timothy.s.laffredi@usdoj.gov
- Timothy S. Laffredi timothy.s.laffredi@usdoj.gov
- Richard A. Lapping rich@trodelalapping.com
- Omeed Latifi olatifi@theadlerfirm.com, kdeubler@theadlerfirm.com
- John E. Lattin jlattin@ostergar.com, cslovenec@ostergar.com
- Paul J. Laurin plaurin@btlaw.com, slmoore@btlaw.com
- Michael Lauter mlauter@sheppardmullin.com
- Kenneth T. Law klaw@bbslaw.com
- Francis J. Lawall francis.lawall@troutman.com, susan.henry@troutman.com
- Andrew Michael Leblanc ALeblanc@milbank.com
- Erica Lee Erica.Lee@doj.ca.gov
- Scott Lee scott.lee@lewisbrisbois.com, monique.talamante@lewisbrisbois.com
- Paul J. Leeds Pleeds@fsl.law
- Edward J. Leen eleen@mkbllp.com
- Lisa Lenherr llenherr@fennemorelaw.com, ecfbankruptcy@fennemorelaw.com
- Matthew A. Lesnick matt@lesnickprince.com, jmack@lesnickprince.com
- Bryn G. Letsch bletsch@braytonlaw.com
- David B. Levant david.levant@stoel.com, rene.alvin@stoel.com

- Andrew H. Levin alevin@wcghlaw.com
- Emily Sarah Levin elevin@levinlawgroupplc.com
- David Levine dnl@groom.com
- Marc A. Levinson Malevinson@orrick.com, casestream@ecf.courtdrive.com
- Dara Levinson Silveira dsilveira@kbkllp.com, hrobertsdonnelly@kbkllp.com
- Alexander James Demitro Lewicki kdiemer@diemerwei.com
- Alexander James Demitro Lewicki alewicki@diemerwei.com
- Lauren Lifland lauren.lifland@wilmerhale.com, whdocketing@wilmerhale.com
- William S. Lisa jcaruso@nixonpeabody.com
- William S. Lisa wlisa@nixonpeabody.com, jcaruso@nixonpeabody.com
- Jonathan A. Loeb jon.loeb@bingham.com
- Michael B. Lubic michael.lubic@klgates.com
- John William Lucas ocarpio@pszjlaw.com
- Joseph R. Lucia PersonallnjuryGroup@RLSLawyers.com
- Jane Luciano jane-luciano@comcast.net
- Kerri Lyman klyman@irell.com, #-FirmPSDocketing@Steptoe.com
- John H. MacConaghy macclaw@macbarlaw.com, smansour@macbarlaw.com; kmuller@macbarlaw.com
- Iain A. Macdonald imac@macfern.com, 6824376420@filings.docketbird.com
- Malcolm A. Mackenzie mmackenzie@coombslaw.com, vclemen@coombslaw.com
- Tracy L. Mainguy tmainguy@unioncounsel.net, bankruptcycourtntices@unioncounsel.net
- Samuel R. Maizel samuel.maizel@dentons.com, alicia.aguilar@dentons.com
- Adam Malatesta adam.malatesta@lw.com, adam--malatesta-8393@ecf.pacerpro.com
- Katharine Malone malonek@gtlaw.com
- Liam K. Malone malone@oles.com, shahin@oles.com
- Michael W. Malter michael@bindermalter.com
- Ankur Mandhania amandhania@mayerbrown.com
- Craig Margulies cmargulies@margulies-law.com, lsalazar@margulies-law.com
- Geoffrey E. Marr gemarr59@hotmail.com
- Richard A. Marshack rmarshack@marshackhays.com, rmarshack@ecf.courtdrive.com
- Catherine Martin cmartin@simon.com, rtucker@simon.com; bankruptcy@simon.com
- Laila Masud lmasud@marshackhays.com, lmasud@ecf.courtdrive.com
- David P. Matthews jrholdes@thematthewslawfirm.com, aharrison@thematthewslawfirm.com
- Patrick C. Maxcy patrick.maxcy@snrdenton.com
- Simon Richard Mayer simon.mayer@lockelord.com, Rellis@lockelord.com
- James J. Mazza james.mazza@skadden.com, wendy.lamanna@skadden.com
- Benjamin P. McCallen bmccallen@willkie.com
- C. Luckey McDowell luckey.mcdowell@shearman.com
- Matthew D. McGill MMcGill@gibsondunn.com
- Melissa C. McLaughlin mcmclaughlin@venable.com, ataylor@venable.com
- Edward Joseph McNeilly edward.mcneilly@hoganlovells.com, verbon.davenport@hoganlovells.com
- Scott H. McNutt SMcNutt@ml-sf.com, csnell@ml-sf.com
- Thomas Melone Thomas.Melone@gmail.com, Thomas.Melone@AllcoUS.com
- Peter Meringolo peter@pmrkllaw.com
- Frank A. Merola lalalendar@stroock.com, mmagzamen@stroock.com
- Jennifer L. Mersing jennifer.mersing@stoel.com, lisa.petras@stoel.com
- Joshua M. Mester jmester@jonesday.com
- Matthew D. Metzger belvederelegalecf@gmail.com, 8450177420@filings.docketbird.com
- Merle C. Meyers mmeyers@mlg-pc.com
- Randy Michelson randy.michelson@michelsonlawgroup.com
- Gerardo Mijares-Shafai Gerardo.Mijares-Shafai@arnoldporter.com, kenneth.anderson@arnoldporter.com
- Joel S. Miliband jmiliband@brownrudnick.com
- John W. Mills jmills@joneswalker.com
- Joseph G. Minias jminias@willkie.com
- M. David Minnick dminnick@pillsburylaw.com, docket@pillsburylaw.com

- Benjamin Mintz benjamin.mintz@arnoldporter.com, valerie.foley@arnoldporter.com
- Nancy Mitchell nmitchell@omm.com
- Thomas C. Mitchell tcmitchell@orrick.com, Dcmanagingattorneysoffice@ecf.courtdrive.com
- John A. Moe john.moe@dentons.com, glenda.spratt@dentons.com
- Aaron J. Mohamed ajm@brereton.law, aaronmohamedlaw@gmail.com
- David Molton dmolton@brownrudnick.com
- Kevin Montee kmontee@monteeassociates.com
- Christopher D. Moon chris@moonlawapc.com, kevin@moonlawapc.com
- David W. Moon lalacalendar@stroock.com, mmagzamen@stroock.com
- Erika L. Morabito emorabito@foley.com, hsiagiandraughn@foley.com
- Candace J. Morey cjm@cpuc.ca.gov
- Courtney L. Morgan morgan.courtney@pbgc.gov
- Richard Morin , 6863427420@filings.docketbird.com
- Kimberly S. Morris kmorris@bakerlaw.com, hhammonturano@bakerlaw.com
- Rodney Allen Morris Rodney.Morris2@usdoj.gov
- Joshua D. Morse Joshua.Morse@dlapiper.com, docket@pillsburylaw.com
- Andrew H. Morton andrew.morton@stoel.com, lisa.petras@stoel.com
- Thomas G. Mouzes tmouzes@boutininc.com
- Thomas G. Mouzes tmouzes@boutinjones.com
- Peter S. Munoz pmunoz@reedsmith.com, gsandoval@reedsmith.com
- John Leland Murphree LMurphree@maynardcooper.com, mshabpareh@maynardcooper.com
- Bennett J. Murphy bmurphy@bennettmurphylaw.com
- Julie M. Murphy jmmurphy@stradley.com
- Michael S. Myers myersm@ballardspahr.com
- David L. Neale dln@lnbyg.com
- David Neier dneier@winston.com
- Brittany J. Nelson bnelson@foley.com, hsiagiandraughn@foley.com
- Michael S. Neumeister MNeumeister@gibsondunn.com
- Howard S. Nevins lsamosa@hsmlaw.com
- Samuel A. Newman sam.newman@sidley.com, laefilingnotice@sidley.com
- Melissa T. Ngo harris.melissa@pbgc.gov, efile@pbgc.gov
- Mario R. Nicholas mario.nicholas@stoel.com, ana.trask@stoel.com
- Dustin Nirschl dustin.nirschl@bbklaw.com, Linda.tapia@bbklaw.com
- Sean Nolan snolan@akingump.com, NYMCO@akingump.com
- Gregory C. Nuti chart@nutihart.com, nwhite@nutihart.com
- Eric A. Nyberg e.nyberg@kornfieldlaw.com, g.michael@kornfieldlaw.com
- Abigail O'Brient aobrient@mintz.com, docketing@mintz.com
- Alicia D. O'Neill aoneill@wattsguerra.com, cwilson@wattsguerra.com
- Julie E. Oelsner joelsner@weintraub.com, bjennings@weintraub.com
- Office of the U.S. Trustee / SF USTPRegion17.SF.ECF@usdoj.gov
- Aron M. Oliner roliner@duanemorris.com, dmicros@duanemorris.com
- Matthew Jon Olson matt@macfern.com, stell.laura@dorsey.com
- Scott Olson scott.olson@bclplaw.com
- Steven M. Olson steve@bfolegal.com
- Aram Ordubegian Ordubegian.Aram@ArentFox.com
- Jose Antonio Ortiz aortiz@jhwclaw.com
- Keith C. Owens kowens@foxrothschild.com, ARCDocketing@foxrothschild.com
- Gabriel Ozel , gabeozel@gmail.com
- Amy S. Park amy.park@skadden.com
- Donna Taylor Parkinson donna@parkinsonphinney.com
- Peter S. Partee ppartee@huntonak.com, candonian@huntonak.com
- Paul J. Pascuzzi ppascuzzi@ffwplaw.com, docket@ffwplaw.com
- Kenneth Pasquale , mlaskowski@stroock.com
- Dow Wakefield Patten dow@forthrightlaw.com

- Larry Allan Peluso pelusolaw@gmail.com, firm@pelusolaw.net
- Valerie Bantner Peo vbantnerpeo@buchalter.com
- Yosef Peretz yperetz@peretzlaw.com, skim@peretzlaw.com
- Christian A Pereyda cpereyda@maynardnexsen.com
- Thomas R. Phinney tphinney@ffwplaw.com
- R. Alexander Pilmer alexander.pilmer@kirkland.com, keith.catuara@kirkland.com
- M. Ryan Pinkston rpinkston@seyfarth.com, 5314522420@filings.docketbird.com
- Estela O. Pino epino@epinolaw.com, rmahal@epinolaw.com
- Gregory Plaskett GREGORY.PLASKETT@GMAIL.COM
- Mark D. Plevin mplevin@crowell.com, mark-plevin-crowell-moring-8073@ecf.pacerpro.com
- Steven G. Polard spolard@eisnerlaw.com, calendar-lao@ropers.com
- Mark D. Poniatowski ponlaw@ponlaw.com
- Cara M. Porter cporter@marincounty.org, ealfaro@marincounty.org
- Christopher E. Prince cprince@lesnickprince.com
- Douglas B. Provencher dbp@provlaw.com
- Amy C. Quartarolo amy.quartarolo@lw.com
- Lary Alan Rappaport lrappaport@proskauer.com, PHays@proskauer.com
- Justin E. Rawlins justinrawlins@paulhastings.com
- Hugh M. Ray hugh.ray@pillsburylaw.com, nancy.jones@pillsburylaw.com
- Paul F. Ready smeyer@farmerandready.com
- Caroline A. Reckler caroline.reckler@lw.com
- Scott Reents sreents@cravath.com
- Steven J. Reisman sreisman@katten.com, nyc.bknotices@kattenlaw.com
- Jeffrey M. Reisner jreisner@irell.com, #-FirmPSDocketing@Steptoe.com
- Jack A. Reitman , srichmond@lgbfirm.com
- Emily P. Rich erich@unioncounsel.net, bankruptcycourtnotices@unioncounsel.net
- David J. Richardson drichardson@bakerlaw.com, aagonzalez@bakerlaw.com
- Christopher O. Rivas crivas@reedsmith.com, chris-rivas-8658@ecf.pacerpro.com
- David B. Rivkin drivkin@bakerlaw.com, jmeeks@bakerlaw.com
- John R. Rizzardi kcoselman@cairncross.com, tnguyen@cairncross.com
- Daniel Robertson robertson.daniel@pbgc.gov, efile@pbgc.gov
- Michael Rogers mrogers@lambertrogers.com, jan@lambertrogers.com
- Lawrence M. Rolnick lrolnick@rksllp.com
- Christina Anne Romak christina.romak@bakerbotts.com, vanessa.araujo@bakerbotts.com
- Jorian L. Rose jrose@bakerlaw.com
- Laurence M. Rosen lrosen@rosenlegal.com, zstanco@rosenlegal.com
- Paul M. Rosenblatt prosenblatt@kilpatricktownsend.com, mwilliams@kilpatricktownsend.com
- David A. Rosenzweig david.rosenzweig@nortonrosefulbright.com
- Gregory A. Rougeau grougeau@birlawsf.com
- Jason C. Rubinstein jrubinstein@fklaw.com, mcclerk@fklaw.com
- Nathan Q. Rugg nathan.rugg@bfkn.com, jean.montgomery@bfkn.com
- Thomas B. Rupp trupp@kbklp.com
- Steven B. Sacks ssacks@sackslawoffice.com
- Eric E. Sagerman esagerman@bakerlaw.com
- Robert Sahyan rsahyan@sheppardmullin.com, lsegura@sheppardmullin.com
- Gregory M. Salvato gsalvato@salvatolawoffices.com, calendar@salvatolawoffices.com
- Jonathan C. Sanders jsanders@stblaw.com
- Nanette D. Sanders nanette@ringstadlaw.com, becky@ringstadlaw.com
- Lovee Sarenas lovee.sarenas@dinsmore.com
- Brandy A. Sargent brandy.sargent@klgates.com, docketclerk@stoel.com
- Patricia Savage psavesq@gmail.com, jodi.savage@gmail.com
- Sblend A. Sblendorio sas@hogefenton.com
- Francis O. Scarpulla fos@scarpullalaw.com, cpc@scarpullalaw.com
- Daren M. Schlechter daren@schlechterlaw.com, info@schlechterlaw.com

- Bradley R. Schneider bschneider@kbbfirm.com
- Harvey S. Schochet Harveyschochet@dw.com
- Nathan A. Schultz nschultzesq@gmail.com, kjarashow@goodwinlaw.com
- Lisa Schweitzer lschweitzer@cgsh.com
- Eric J. Seiler eseiler@fklaw.com, mclerk@fklaw.com
- Jonathan A. Shapiro JShapiro@goodwinlaw.com
- Robin D Shofner shofner@mobolaw.com
- Leonard M. Shulman lshulman@shbllp.com
- Andrew I. Silfen andrew.silfen@arentfox.com
- Wayne A. Silver w_silver@sbcglobal.net, ws@waynesilverlaw.com
- Brandt Silver-Korn bsilverkorn@edelson.com, docket@edelson.com
- Craig S. Simon csimon@bergerkahn.com, aketcher@bergerkahn.com
- Gerald Singleton gerald@slffirm.com, BKECFCANB@SLFfirm.com
- Steven J. Skikos sskikos@skikos.com, mmontoya@skikos.com
- Michael K. Slattery mslattery@lkfirm.com, rramirez@lkfirm.com
- Dania Slim dania.slim@pillsburylaw.com, melinda.hernandez@pillsburylaw.com
- Jennifer N. Slocum jennifer.slocum@stoel.com, docketclerk@stoel.com
- Aaron C. Smith asmith@lockelord.com, autodocket@lockelord.com
- Alan D. Smith adsmith@perkinscoie.com, al-smith-9439@ecf.pacerpro.com
- Jan D. Sokol jdsokol@lawssl.com
- Daniel Solish cocolaw@stancounty.com, solishd@stancounty.com
- Randy B. Soref rsoref@polsinelli.com, ccripe@polsinelli.com
- Joseph Sorkin jsorkin@akingump.com, NYMCO@akingump.com
- Michael St. James ecf@stjames-law.com
- Diane C. Stanfield diane.stanfield@alston.com, nelly.villaneda@alston.com
- Howard J. Steinberg steinbergh@gtlaw.com, pearsallt@gtlaw.com
- Harriet A. Steiner harriet.steiner@bbklaw.com, claudia.peach@bbklaw.com
- Lillian G. Stenfeldt lillian.stenfeldt@rimonlaw.com, docketing@rimonlaw.com
- Cheryl L. Stengel clstengel@outlook.com, stengelcheryl40@gmail.com
- David M. Stern dstern@ktbslaw.com
- Geoffrey S. Stewart gstewart@jonesday.com, mmelvin@jonesday.com
- Alan Joseph Stone AStone@milbank.com, DMcCracken@Milbank.com
- Jason D. Strabo jstrabo@mwe.com
- Michael H. Strub mstrub@ggtriallaw.com, mhstrub1@gmail.com
- Rebecca Suarez rsuarez@crowell.com
- Brad T. Summers , docketing-pdx@lanepowell.com
- Karin Swope kswope@cpmlegal.com
- Kristine Theodesia Takvoryan ktakvoryan@ckrlaw.com
- Kesha Tanabe kesha@tanabelaw.com
- Mary Ellmann Tang mtang@frenchlyontang.com, nfears@frenchlyontang.com
- Dante Taylor dante.taylor@sfcityatty.org
- Elizabeth Lee Thompson ethompson@stites.com, docketclerk@stites.com
- John C. Thornton jct@andrewsthornton.com, aandrews@andrewsthornton.com
- Elisa Tolentino cao.main@sanjoseca.gov
- Meagan S. Tom meagan.tom@lockelord.com, autodocket@lockelord.com
- Edward J. Tredinnick etredinnick@foxrothschild.com
- Matthew J. Troy matthew.troy@usdoj.gov
- Rocky C. Tsai rocky.tsai@ropesgray.com, matthew.haut@ropesgray.com
- Michael Tye Michael.Tye@usdoj.gov
- Donald W. Ullrich ullrichlawfirm@att.net
- Gary D. Underdahl gunderdahl@askllp.com, lmiskowiec@askllp.com
- Andrew Van Ornum avanornum@vlmglaw.com, hchea@vlmglaw.com
- Shmuel Vasser shmuel.vasser@dechert.com, brett.stone@dechert.com
- Victor A. Vilaplana vavilaplana@foley.com, rhurst@foley.com

- Marta Villacorta marta.villacorta@usdoj.gov
- Carol C. Villegas cvillegas@labaton.com, NDonlon@labaton.com
- John A. Vos InvalidEMailECFonly@gmail.com, PrivateECFNotice@gmail.com
- Bao M. Vu bao.vu@stoel.com, sharon.witkin@stoel.com
- Nicholas Wagner kschemen@wagnerjones.com, bwagner@wagnerjones.com
- Jonathan D. Waisnor jwaisnor@willkie.com, mao@willkie.com
- Rachel M. Walsh rwalsh@goodwinlaw.com, tsutton@goodwinlaw.com
- Riley C. Walter RIBTcf@wjhattorneys.com
- Phillip K. Wang phillip.wang@rimonlaw.com
- Samuel M. Ward sward@barrack.com, cfessia@barrack.com
- Philip S. Warden philip.warden@pillsburylaw.com, kathy.stout@pillsburylaw.com
- Gregory P. Waters gwaters@elllaw.com, gregorywatersesq@gmail.com
- Guy L. Watts gwatts@wattsguerra.com, cwilson@wattsguerra.com
- Mikal C. Watts mcwatts@wattsguerra.com, cwilson@wattsguerra.com
- Laura Herron Weber lweber@sl-employmentlaw.com
- Lindsy M. Weber lweber@polsinelli.com, yderac@polsinelli.com
- Joseph M. Welch joseph.welch@blankrome.com, lverstegen@buchalter.com
- Todd J. Wenzel todd@wenzellawoffices.com
- Meredith Werner meredith.werner@clydeco.us
- David Walter Wessel DWessel@efronlawfirm.com, hporter@chdlawyers.com
- Joseph West westjoseph@earthlink.net, josephw998@gmail.com
- Drew M. Widders dwidders@wilcoxenlaw.com, nina@wilcoxenlaw.com
- Jason P. Williams jwilliams@wplgattorneys.com
- Eric R. Wilson kdwbankruptcydepartment@kelleydrye.com, ewilson@kelleydrye.com
- Kimberly S. Winick kwinick@clarktrev.com, knielsen@clarktrev.com
- Rebecca J. Winthrop rebecca.winthrop@nortonrosefulbright.com, diana.cardenas@nortonrosefulbright.com
- David Wirt david.wirt@hklaw.com, denise.harmon@hklaw.com
- Ryan A. Witthans rwitthans@fhlawllp.com
- Keith H. Wofford keith.wofford@ropesgray.com, nova.alindogan@ropesgray.com
- Risa Lynn Wolf-Smith rwolf@hollandhart.com, lmlopezvelasquez@hollandhart.com
- Douglas Wolfe asm@asmcapital.com
- Andrea Wong wong.andrea@pbgc.gov, efile@pbgc.gov
- Christopher K.S. Wong christopher.wong@afslaw.com, yvonne.li@afslaw.com
- David A. Wood dwood@marshackhays.com, lbuchanan@marshackhays.com
- Kirsten A. Worley worleyk@higgslaw.com, admin@wlawcorp.com
- Kinga Wright kinga.wright@lockelord.com, autodocket@lockelord.com
- Antonio Yanez ayanez@willkie.com
- Cathy Yanni cathy@cathyanni.com, pstrunk@browngreer.com
- Andrew Yaphe andrew.yaphe@davispolk.com, pge.dpw.routing@davispolk.com
- Stephanie Yee syee@jangleit.com, klockwood@jangleit.com
- Tacie H. Yoon tyoon@crowell.com
- Bennett G. Young byoung@jmbm.com, jb8@jmbm.com
- Eric G. Young eyoung@dcalaw.com, Jackie@dcalaw.com
- Nicole M. Zeiss nzeiss@labaton.com
- Paul H. Zumbro mao@cravath.com
- Brittany Zummer bzummer@theadlerfirm.com, nfournier@theadlerfirm.com
- Dario de Ghetaldi deg@coreylaw.com, lf@coreylaw.com

1 **2. SERVED BY UNITED STATES MAIL:** On N/A I served the following persons and/or entities at
2 the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy
3 thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows.
4 *Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24*
5 *hours after the document is filed.*

6 **3.**
7 **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION**
8 **OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling
9 LBR, on May 23, 2023, I served the following persons and/or entities by personal delivery, overnight mail
10 service, or for those who consented in writing to such service method, by facsimile transmission and/or
11 email as follows. *Listing the judge here constitutes a declaration that personal delivery on, or overnight*
12 *mail to, the judge will be completed no later than 24 hours after the document is filed.*

13 By email to counsel for the Reorganized Debtors: PGElaims@kbklp.com

14 I declare under penalty of perjury under the laws of the United States that the foregoing is true and
15 correct.

16 May 23, 2023
17 *Date*

18 Kimberly Hoang
19 *Printed Name*

20 /s/ Kimberly Hoang
21 *Signature*